

# ANSWER TO CUSTODY INSTRUCTION PACKET



# TABLE OF CONTENTS

<b><u>SECTION</u></b>	<b><u>PAGE NUMBER</u></b>
<b>Introduction</b>	
When To Use The Packet.....	1
How To Use The Packet.....	2
Tips and Reminders.....	3
Who is Petitioner and Respondent.....	3
Legal Advice.....	3
Organizing Court Papers.....	5
Custody Process Flowchart.....	6
<b>Section 1: Filing For Custody</b>	
Starting the Process.....	7
Jurisdictional Requirements.....	8
Answer form.....	8
Optional Forms.....	12
Motion to Dismiss.....	12
Consent Order-Custody, Visitation.....	12
Waiver of Rights Under the Servicemembers' Relief Act	14
Where to File.....	14
Additional Instructions.....	16
Sample Forms	
Answer form.....	18
Motion to Dismiss.....	20
Consent Order-Custody, Visitation.....	21
Waiver of Rights Under the Servicemembers' Relief Act..	23
<b>Section 2: Parent Education Class</b>	
Certificate of Completion.....	24
<b>Section 3: Mediation</b>	
Consent Orders.....	26

Temporary Orders.....	27
<b>Section 4: Hearing with a Judge</b>	
Scheduling the Hearing.....	31
Motion for Continuance.....	31
The Day of the Hearing.....	33
The Final Custody Order.....	34
Sample Forms	
Motion for a Continuance.....	35



# ANSWER TO CUSTODY INSTRUCTION PACKET

---

Use the **Answer to Petition for Custody Packet** **ONLY** when:

- ☐ You have been named as the Respondent in a Petition for Custody.

If you and the Petitioner already agree about how you want the custody arrangement to be handled, you may file a **Consent Order**. To file a Consent Order, you and the Petitioner write down how you want the custody arrangement to work and a Hearing Officer will sign your agreement and make it an order of the Court. To obtain a Consent Order, you or the Petitioner must have filed all of the following forms. Each form is described in detail in the **Custody Instruction Packet** on the page number listed in parenthesis after it. You must file the **Petition for Custody** (page 8), the **Custody Separate Statement** (page 10), the **Information Sheet** (page 11) and the **Consent Order-Custody, Visitation** (page 12).

To make this Overview easier to read, it will explain Custody as if the Petitioner wanted to file for Custody of one child. If the Petitioner has more than one child with the other parent, the Petitioner may file for Custody of **all of his/her children with the other parent** on the same petition. Please note that if the children have different fathers or mothers, the Petitioner must file for Custody on separate petitions. For example, if two of the children have one father and one of the children has a different father, the Petitioner would be required to file two petitions, one for each father.

## HOW TO USE THE PACKET

This packet contains general information about the process of filing an Answer to a Petition for Custody, basic instructions on how to complete the Court forms you must file, and samples of the completed Court forms.

You should read the instructions and sample forms carefully **before** filling out any forms. **ONLY FILE THE FORMS INCLUDED IN THE FORMS PACKET.** The sample forms included in this Instruction Packet are simply to help you understand how to fill out the real forms in the Forms Packet.

**YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE.** For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to ensure you know what you are supposed to do and when.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.



**READ THIS SECTION CAREFULLY**



**THIS DOCUMENT MUST BE FILED**



**FILL IN THE BLANKS OR WRITE INFORMATION HERE**



**YOU DO NOT HAVE TO TAKE THESE STEPS NOW.**



## TIPS AND REMINDERS ...

- ✓ Make sure to read any **Answers to Frequently Asked Questions** on Custody. They will help you to better understand the Custody process.
- ✓ Remember who is the Petitioner and who is the Respondent.
  - The **PETITIONER** is the person who filed the Petition for Custody.
  - The **RESPONDENT** is the person replying (responding) to the Petition, in other words, you.
- ✓ Remember that just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

- ✓ If you would like assistance in finding an attorney, you can call the **Lawyer Referral Service** in New Castle County, 302-478-8850, and in Kent and Sussex Counties, 1-800-773-0606. (You may call the same telephone numbers and ask for the **Legal Help Link** to find out if you qualify for free legal assistance.) You also can refer to the **Attorney Roster** that is located in the Family Court Resource Centers. The Attorney Roster is a listing of some of the attorneys who practice family law in Delaware and includes information about how to contact the attorneys and what fees the attorneys charge.
- ✓ Always bring your photo identification with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**

**PLEASE READ AND REMEMBER THESE IMPORTANT TIPS**

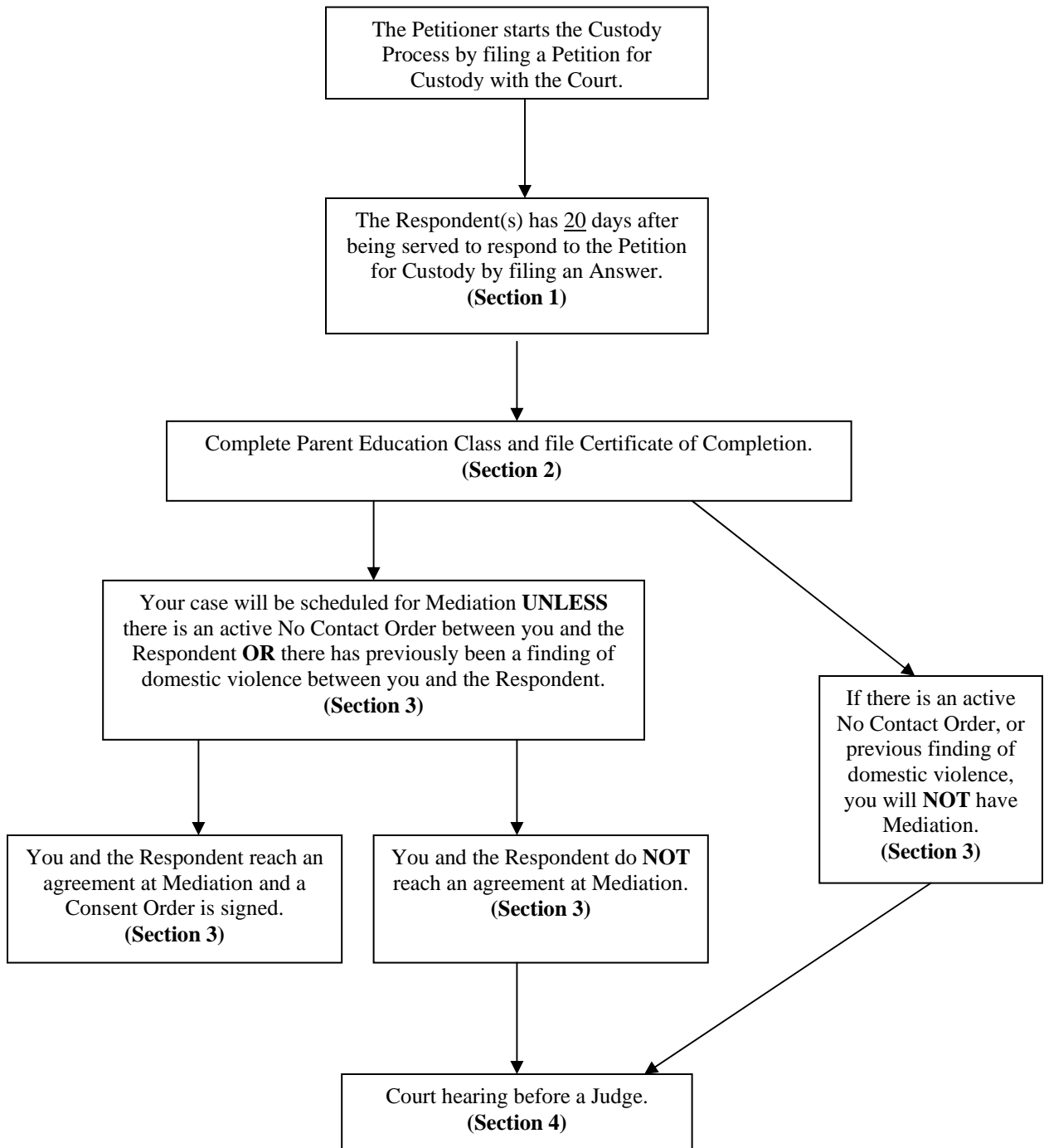
**REMEMBER**

---

- **Keep a copy of every document and court paper.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers with you every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof that the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**



# CUSTODY PROCESS



# SECTION 1

## STARTING THE CUSTODY PROCESS



After the Petitioner files a Petition for Custody, you will be **served** with notice of the petition. This means that you will receive a **Summons** (a Court document explaining your rights and responsibilities) and **copies** of the petition and any other paperwork the Petitioner filed. Service can be accomplished in the following ways:

- You can be personally served. This means that a person designated by the Court will hand the papers to you directly at your home or your job.
- You can be served by mail. This means the papers will be mailed to you by certified mail.
- You can be served by publication which means the Petitioner must publish notice of the Petition for Custody in a local newspaper. If you read a notice in the newspaper naming you as a Respondent, You must come to Family Court and obtain copies of all the papers that have been filed by the Petitioner.

Regardless of how you receive notice of the petition, it is **VERY IMPORTANT** to read all documents **carefully** so you can properly respond to the allegations in the Petition for Custody.



The Petitioner can only file for custody if the following jurisdictional requirements are met. If the statements on the following page are not true, you should request that the Court dismiss the Petition for Custody. Please see page 12 for information on how to file a Motion to Dismiss.

- ☐ There is **NO** Custody Order in place in Delaware or anywhere else. (If there is an existing Custody Order regarding the child and you want to **change the Order**, read the Modification of Custody Instruction Packet.); **AND**
- ☐ The child had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for Custody. (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies in your situation.); **AND**
- ☐ The Petitioner is one of the following:
  - The Mother of the child; **OR**
  - The Father (or presumed father) of the child; **OR**
  - The Adoptive Parent; **OR**
  - A Stepparent of the child **BUT ONLY IF:**
    - The Petitioner is married to the child's other parent; **AND**
    - The child's other parent has custody or placement of the child; **AND**
    - While the child's other parent had custody or placement of the child, he/she dies or became disabled; **AND**
    - The child had been living with the other parent and the stepparent until such time that the other parent died or became disabled.

**FILING AN ANSWER IS YOUR WAY OF TELLING YOUR SIDE OF THE STORY TO THE COURT.** The Court will use the information in your Answer when deciding whether or not the Petitioner should be granted custody. If you

**do not** file an Answer, the Court will not know how you feel regarding the Petition for Custody. It is **VERY IMPORTANT** that you file an Answer, so the Court knows how you feel about the custody petition.



To respond to the Petition for Custody, you **MUST** file the **ORIGINAL** with the Court and mail **ONE (1) COPY** of each form below to the Petitioner **within 20** days of receiving the Petition:



**Answer form.** (file one original and mail one copy to the Petitioner)

- In your Answer you may do the following:
  - **Admit** (you agree the statement is true) or **deny** (you believe the statement is false) any statements made by the Petitioner in the Petition for Custody. If the Petitioner numbered his/her statements, write down the number then state whether you admit or deny that statement. An example can be found on the Sample Answer on page 18. If the Petitioner did not number his/her statements, write down the statement itself then state whether you admit or deny that statement. If you deny the statement, explain to the Court **why** the Petitioner's statement is not true. **If you do not respond to a statement, the Court will assume you agree that the statement is true.** If you believe a statement is false, you **must deny** it.
  - **File your own Petition for Custody.** You must state the reasons why it is in the best interest of the child for you to be awarded custody of the child. For more information on filing a Petition for Custody see the Petition for Custody Instruction Packet.
- Only a natural or adoptive parent or a qualifying step-parent (see page 8 of the Custody Instruction Packet) may file for custody. If

you or the Petitioner are not one of the above people include that information in your Answer.

- **Before** the Court can decide a custody matter, it must determine that the State of Delaware has jurisdiction to make a decision. For Delaware to have jurisdiction to decide custody the child must have been living in Delaware for **at least 6 consecutive months** before the petition was filed. If this is not true, include this information in your Answer. (There are exceptions to this 6-month requirement. Talk to an attorney to see if an exception applies in your situation.)
- When responding to the Petition for Custody, you want to give the Court information so that it can decide why it is **NOT** in the child's "**best interest**" for the Petitioner to be given custody of the child. The child's "best interest" is the legal standard the Court must follow when deciding who should have custody of a child. (See Title 13 of the Delaware Code, section 722.) The Court will want to know about the following things when deciding what is in the child's "best interest." Explain to the Court how the following things apply in your situation.

1. The wishes of the child's parents as to his/her custody and living arrangements;
2. The wishes of the child as to his/her custody and living arrangements;
3. The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child's home or affecting the child's best interest;
4. The child's adjustment to his/her home, school and community;
5. The mental and physical health of all individuals involved;

6. How well each parent has in the past and continues to satisfy their parental rights and responsibilities with respect to their children;
7. Evidence of domestic violence; and
8. The criminal history of any party or adult member of a household, including guilty pleas, pleas of no contest and criminal convictions.

The Court can also choose to consider other information pertaining to the best interest of the child.

- If you need more space to write, you may attach additional pages to the Answer form. Be sure to state on the form that you have attached more pages, so the Court and the Petitioner will know to look for additional information. Also, number each additional page that you attach by writing the page number at the bottom of the page.
- The Court will not consider parents' conduct that does not affect the child. Furthermore, the Court does not believe one parent is better than the other because of his or her sex.
- You must sign your Answer in the presence of a notary public or authorized Court staff.

## BELOW ARE OPTIONAL FORMS

**ONLY** file the following forms if the situation applies to you.



### **Motion to Dismiss** *(file original and one copy)*

- File this document only if one of the **jurisdictional requirements** described on page 8 has not been met.
- On this form, you will ask the Court to dismiss the Petition for Custody. You **MUST** explain which **specific** jurisdictional requirement was not met. An example of a completed Motion to Dismiss is found on page 20.
- When you file the Motion to Dismiss, you must also file a **Notice of Motion** form and a blank **Order form**. For more information on filing a Motion, please see the Motion Overview and Instruction Packet.
- The Motion form, the Notice of Motion form and the blank Order form are not included in the Forms Packet. They are available in the Resource Centers located in each courthouse and on the Family Court website.



### **Consent Order-Custody, Visitation** *(file original)*

- File this document only if **you and the Petitioner have already agreed** on how the custody matter should be decided.
- On this form you will describe for the Court the following things:
  - Which parent(s) will have custody of the child,
  - Whether that parent will have Joint Custody or Sole Custody (see page 28 for information about the types of custody),
  - Where the child will be living,
  - Which parent will have visitation with the child, and
  - What the visitation schedule will be.

- When describing the visitation schedule, be as **specific** as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for driving the child to and from the visitations. Avoid agreements that simply state that “visitation shall be by mutual agreement of the parties.” While this may make it easier for you and the Petitioner to reach an agreement now, it gives you no guidance in how visitation will occur should you and the Petitioner be unable to reach a mutual agreement regarding visitation at a later date. It may be better to decide on the details of visitation now, rather than have to come back to Court to resolve your differences in the future. For more information about visitation, please see page 29. You may also refer to the Visitation Overview and Instruction Packet.
- You and the Petitioner must both sign and have notarized the Consent Order.
- Before you file the Consent Order, you and the Petitioner **may** have to meet with a court employee to review the terms of your agreement.
- Once you have filed your agreement with the Court, it will be forwarded to a Hearing Officer who will review your agreement. If the Hearing Officer finds that the agreement is in the best interest of the child, then he/she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Hearing Officer signs the Consent Order, it is a court order and you and the Petitioner **MUST** follow the instructions in the Order. The Court will mail a copy of the signed order to you and the Petitioner.
- If circumstances change in the future, you may be able to change the terms of the Consent Order by filing to modify custody. See the Modification of Custody Overview and Instruction Packet for more information on how to change a custody order.



- The Consent Order is **NOT** included in the Forms Packet. This form is available in the Family Court Resource Centers.



**Waiver of Rights under the Servicemembers' Civil Relief Act** (*file one original and one copy*) **Complete this section ONLY if YOU, the Respondent, ARE in the military.**

- **ONLY** file this form if you **ARE** in the military and would like to **WAIVE** your rights under the Servicemembers' Civil Relief Act.
- This Waiver allows the Court to proceed with the custody process if you are unavailable because of military duties.
- If you are in the military, you **MUST** file a Waiver of Rights under the Servicemembers' Civil Relief Act, an Affidavit of Appearance **OR** an Answer. If you do not file one of the above, the Court will not schedule your Custody Hearing until a Waiver of Rights under the Servicemembers' Civil Relief Act is filed **OR** an attorney is appointed for you.



**BE SPECIFIC WHEN COMPLETING THE FORMS** and make sure you respond to all of the Petitioner's allegations. **Remember**, that if you fail to respond to any allegation, the Court will assume you agree that the allegation is true. When you complete a form, write in blue or black ink **AND** write neatly.



File the forms at the Family Court **in the County where the child currently lives.**

- In Kent and Sussex Counties you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- In New Castle County, you may file your papers at the Resource Center on the second floor of the New Castle County Courthouse or, **IF**, you have all of the forms completed, you do **NOT** have any questions, you have made the necessary copies and you do **NOT** need any papers notarized, you may file your papers at the **Central**

**Filing and Payment Center** located on the first floor of the New Castle County Courthouse. There is no staff assistance at the **Central Filing and Payment Center**.

- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed or e-mailed.



**REMEMBER** to mail a copy of all the papers that you file with the Court to the Petitioner. You **MUST** fill out the **Affidavit of Mailing** on the bottom of the form telling the Court that you have mailed a copy of the papers you filed to the Petitioner or the Petitioner's attorney (if there is one). If you do not mail a copy of the Answer form to the Petitioner, the Court **may not consider** the information on that form. If there was more than one Respondent you **MUST ALSO** mail a copy of the Answer that you file to each of the Respondents and indicate you have done so on the Affidavit of Mailing.

## ADDITIONAL INSTRUCTIONS FOR SECTION 1



### THE ANSWER

- If you file your own Petition for Custody, the Petitioner will have **20 days** after receiving your petition to file with the Court his/her Answer (response) to your petition.



### AUTOMATIC COURT ORDER

- When the Petitioner filed the Petition for Custody, Family Court immediately entered a **Preliminary Injunction** (an automatic **Court Order**) that applies to **BOTH YOU AND THE PETITIONER**. It became effective **upon the Petitioner as soon as he/she filed** the Petition for Custody. The Preliminary Injunction becomes effective upon **YOU** at the time you are **served** with the petition.
- The Preliminary Injunction contains language that prohibits any party from removing a child from the jurisdiction of the Delaware Family Court without receiving permission from the other party or the Court.
- The purpose of the Preliminary Injunction is to prevent a person from **permanently** removing the child from Delaware, or from removing the child for a period of time that would interfere with the other person's right to spend time with the child and participate in the child's life. **NEITHER YOU NOR THE RESPONDENT MAY RELOCATE (MOVE) THE CHILD TO ANOTHER STATE OR TAKE THE CHILD OUT OF DELAWARE FOR A PERIOD OF TIME THAT WOULD CAUSE FAMILY COURT TO LOSE LEGAL AUTHORITY (JURISDICTION) TO DETERMINE THE CUSTODY CASE.**

- If you have questions regarding the relocation of a child, you should contact an attorney.

**SECTION 2 BEGINS AFTER THE  
SAMPLE FORMS FOR SECTION 1.**



**YOU SHOULD BEGIN SECTION 2  
ONCE YOU HAVE FILED THE FORMS  
IN SECTION 1.**

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

## ANSWER



Petitioner

v. Respondent

Name <b>Anne C. Smith</b>	Name <b>John D. Smith</b>	File Number <b>CK04-12111</b>
Street Address <b>101 Oak Street</b>	Street Address <b>490 Pine Street</b>	
Apt. or P.O. Box Number <b>Apt. #123</b>	Apt. or P.O. Box Number	Petition Number <b>04-77775</b>
City State Zip Code <b>Dover DE 19901</b>	City State Zip Code <b>Wilmington DE 19899</b>	
Attorney Name and Phone Number <b>n/a</b>	Attorney Name and Phone Number <b>n/a</b>	

The respondent hereby answers the numbered paragraphs in the pleading as follows:

1. Admitted.
2. Admitted. However until January of 2004, the children had lived with both Mother and Father their entire lives.
3. Denied in part. The children are excelling in school in Dover, but they also excelled at school in Wilmington and it is in their best to return to school in Wilmington.
4. Denied.



Admit or deny each allegation made in the Petition for Custody.

SWORN TO AND SUBSCRIBED before  
me this date: March 30, 2004



Sign in the presence of a notary.



**John D. Smith**

Respondent/Attorney

**Donna King**



Signed by notary or court staff.

Notary Public/Clerk of Court

A copy of this answer must be sent to the Petitioner. See reverse side for Affidavit of Mailing.

## AFFIDAVIT OF MAILING

I affirm that at true and correct copy of the U.S. mail on this date, March 30, 2004 and sent to the Petitioner or the attorney address listed on the petition, being Anne C. Smith, first class postage pre-paid.



Fill in the Petitioner's name and the date that you mailed him/her a copy of the motion.



Sign in the presence of a notary.



John D. Smith

Respondent/Attorney

SWORN TO AND SUBSCRIBED before me on this date, March 30, 2004.



Signed by notary or court staff.

Donna King

Notary Public /Clerk of Court

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

## MOTION FOR Dismissal

Fill in the title of the motion that you are filing.

**Petitioner**

**Respondent**

Name  
**Anne C. Smith**

Street Address  
**101 Oak Street**

Apt. or P.O. Box Number  
**Apt. #123**

City State Zip Code  
**Dover DE 19901**

Social Security Number Date of Birth  
**111-22-3333 2/3/64**

Attorney Name and Phone Number  
**n/a**

Name  
**John D. Smith**

Street Address  
**490 Pine Street**

Apt. or P.O. Box Number

City State Zip Code  
**Wilmington DE 19899**

Social Security Number Date of Birth  
**787-98-6767 7/13/65**

Attorney Name  
**n/a**

**CK04-12111**

Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving **Custody** having been filed heretofore in this Court,

Movant hereby moves the Court for **to dismiss the Petition for Custody** support thereof, alleges the following facts:

Explain what you would like the court to order.

The Petitioner and the children have only been living in Delaware for three months. Until January of 2004 Mother, Father and the children lived in the state of Virginia. Because the children have not lived in Delaware for six months prior to Mother filing the Petition for Custody, it should be dismissed.

Describe in detail for the Court why it should grant your motion.

SWORN TO AND SUBSCRIBED  
before me this date,

**March 30, 2004**

**Donna King**

Notary Public/Clerk of Court



Sign in the presence of a notary.



**John D. Smith**

Movant/Attorney



Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date

**March 30, 2004**

**Anne C. Smith**

pre-paid.

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

at the address listed on the petition, being , first class postage

SWORN TO AND SUBSCRIBED  
before me this date,

**March 30, 2004**

**Donna King**

Notary Public/Clerk of Court



Sign in the presence of a notary.



**John D. Smith**

Movant/Attorney



Signed by notary or court staff.

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

## CONSENT ORDER – CUSTODY, VISITATION

Check the county in which you are filing.

*Petitioner*

*v. Respondent*

Name <b>Anne C. Smith</b>	Name <b>John D. Smith</b>	File Number <b>CK04-12111</b>
Street Address <b>10 Oak Street</b>	Street Address <b>490 Pine Street</b>	
Apt. or P.O. Box Number <b>Apt. #123</b>	Apt. or P.O. Box Number	Petition Number <b>04-42301</b>
City <b>Dover</b> State <b>DE</b> Zip Code <b>19901</b>	City <b>Wilmington</b> State <b>DE</b> Zip Code <b>19899</b>	
Attorney Name and Phone Number <b>n/a</b>	Attorney Name and Phone Number <b>n/a</b>	

IN THE INTEREST OF the following child(ren):

Name (Child #1) <b>Doug A. Smith</b>	Date of Birth <b>10/14/91</b>	Name (Child #2) <b>Mary J. Smith</b>	Date of Birth <b>4/17/96</b>
Name (Child #3)	Date of Birth	Name (Child #4)	Date of Birth
Name (Child #5)	Date of Birth	Name (Child #6)	Date of Birth

The parties in the above-entitled case hereby agree upon the following arrangement and do consent to the entry of an Order providing for the same:

Type of Custody: ☒ Joint Custody ☐ Sole Custody

Custody Awarded to: **Anne C. Smith and John D. Smith**

Physical Placement with: **Anne C. Smith**

Relationship: **Mother**

Address: **10 Oak Street, Apt. #123**

**Dover, DE 19901**

Visitation Awarded to: **John D. Smith**

Relationship: **Father**

Address: **490 Pine Street**

**Wilmington, DE 19899**

Check which type of custody you have agreed upon. If you check Joint Custody, you must list both parents on the next line. If you check Sole Custody list only one of the parents on the next line.

Fill in the name of the parent that the child is going to live with most of the time.

OVER



Describe the visitation schedule you have agreed on in detail.

Visitation shall be as follows:

Father shall have visitation with the children every other weekend beginning the first weekend in August. Father will pick the children up from school on Friday afternoon and will have them with him until 4 p.m. on Sunday afternoon. Mother and Father will meet at the McDonald's in Middletown to exchange the children at 4pm on Sunday afternoons. Both parties will try to be on time, but if one is running late, he/she will call the other's cell phone and let him/her know of the delay.

Father shall have visitation with the children every Wednesday evening from 6:30 to 8:30 p.m. Father will pick the children up at Mother's house and will drop them off at Mother's house. If there is a school activity on Wednesday evening so that the child(ren) cannot visit with Father, then Tuesday evening may be substituted.

Father and Mother will follow the visitation schedule set forth in the Standard Visitation Guidelines regarding holidays except for Christmas. Mother will have the holidays in Column 1 on odd years and the holidays in Column 2 on even years. Father will have the holidays in Column 1 on even years and the holidays in Column 2 on odd years. The children will spend all of Christmas Eve with Mother every year and all of Christmas Day with Father every year. Mother will drop the children off at Father's home at 9pm on Christmas Eve and Father will keep the children until 4pm the afternoon before school resumes after Winter Break. Father will drop the children off at Mother's house that afternoon.

Mother will have the children for all of Spring Break.

Fill in the date you have the form notarized.

### Affidavit of Consent

Be it remembered that on July 20, 2004, the above named petitioner and respondent personally came before me, the subscriber, a Notary Public for the State and County listed below, who being duly sworn to law did depose and say: I, the undersigned hereby agree upon the following custodial/visitation agreement for the above-named child(ren). I have signed this consent agreement voluntarily and of my own free will.

We hereby waive our right to a Review of a Commissioner's Agreement

Sign in the presence of a notary or court staff.

Order is entered pursuant to this Voluntary

*Anne C. Smith*

Petitioner

*John D. Smith*

Respondent

State of Delaware

State of Delaware

County of Kent

County of Kent

Sworn to subscribed before me:

Sworn to subscribed before me:

*Donna King*

Mediator/Notary Public

*Donna King*

Mediator/Notary Public

So Ordered this Date:

Signed by Commissioner.

Commissioner

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

IN RE THE MARRIAGE OF



Anne C. Smith

Petitioner,

and

John D. Smith

Respondent,

File No.: \_\_\_\_\_

Petition No.: \_\_\_\_\_

Check the county in which you are filing.

## WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE

Kent

COUNTY

Check the county in which you are filing.

ss.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, March 25, 2004, personally appeared before me, a Notary Public for the State of Delaware in the County declared above, John D. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Respondent in the above captioned case.
2. That Affiant is active duty in the United States military: a
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" and so acknowledges that he/she, or his/her attorney, will be required to appear at all legal proceedings associated with the above captioned case.

The "Affiant" is the Respondent. ONLY the Respondent may complete this form. If you are the Petitioner in this proceeding, you may not fill out this form.



Sign in the presence of a notary or court staff.

John D. Smith

Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, March 25, 2004



Signed by notary or court staff.

Donna Young

Notary Public or Clerk of Court

## Section 2

# PARENT EDUCATION CLASSES



You **MUST** file the certificate below:

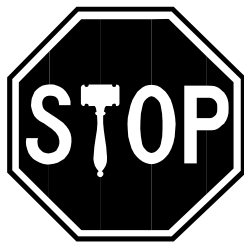


**Certificate(s) of Completion of Parent Education Class** (*file original*)

- All parents with children under the age of 17 must take a Parent Education Class. If your child is between the ages of **8 and 16**, he or she must also attend the class. A listing of available classes is available at the Family Court Resource Centers. Once you and your child have completed the Parent Education Class, a Certificate(s) of Completion of Parent Education Class will be given to you. You must file the **ORIGINAL** copy(ies) of the Certificate of Completion of Parent Education Class with the Family Court.
- Although the matter may be scheduled for Mediation, the Court will **NOT** schedule your Court Hearing before a Judge until the Petitioner files the required Certificate(s) of Completion.
- **BE AWARE**, if you fail to attend the Parent Education Classes and/or do not file your Certificate of Completion with the Court, the Court will take your failure to do so into consideration when deciding who should have custody. The Court may rule against you based on your failure to attend the Parent Education Classes.
- You should register for the Parent Education Classes **AS SOON AS POSSIBLE** because the classes tend to fill quickly and you may be placed on a waiting list.
- The parent with whom the child primarily lives is responsible for taking the child to the classes and filing the original Certificate of Completion. If your child lives with you and the other parent equally, then it is the Petitioner, as the person who filed the Petition

for Custody, who is responsible for taking the children to the classes and filing the original Certificate of Completion.

- If your child **DOES** have to attend the seminars, we suggest you take the children to a provider that offers both the parent seminars **AND** the children seminars to save yourself time and money.



**SECTION 3 WILL DESCRIBES  
WHAT HAPPENS NEXT.**

## Section 3

# MEDIATION



After all of the Respondents have been served with the Petition for Custody and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your custody matter for **Mediation**. **ALL PARTIES** are required to attend.

- The Court will **NOT** schedule Mediation if there is an active **No Contact Order** involving you and the Petitioner or there has been a previous finding of domestic violence such as the following:

- A Protection from Abuse Order; **OR**
- An adjudication of criminal charges.

If there is an active No Contact Order involving you and the Petitioner, you will **NOT** attend Mediation and the Court will schedule a Court Hearing before a Judge.

- Mediation is **NOT** a Court Hearing. At Mediation, a Mediator (a neutral third party) will **try to help** you and the Petitioner reach an agreement about custody. The Mediator will ask you and the other parent to tell how you both think the matter should be resolved and will work with you to find a solution that is agreeable to both of you. In other words, the Mediator is there to help you and the other parent work together in deciding what arrangement is best for your child. Therefore, come with a “spirit of cooperation.”



### CONSENT ORDERS

- If, at the end of Mediation, you and the other parent reach an agreement, the Mediator will type your agreement into a document and you and the Petitioner will sign the agreement. The Mediator will also sign the agreement. Then, you will be allowed to leave and the Mediator will give your signed agreement to a

Commissioner. The Commissioner will decide whether your agreement should become a court order, called a **Consent Order**.

- If the Commissioner decides your agreement should become a Consent Order, the Commissioner will sign the agreement and the Consent Order will be mailed to you and the Petitioner. You will **NOT** have to go to a Hearing with a Judge. Most often, the Commissioner will sign a Consent Order proposed by a Mediator.
- Once a Consent Order is signed by a Commissioner, it is a court order and you and the Petitioner **MUST** follow the terms of the Order.
- If circumstances change in the future, you may be able to change the terms of the Consent Order by filing to modify custody. See the Modification of Custody Overview and Instruction Packet for more information about changing a custody order.



## TEMPORARY ORDERS

- If you and the other parent do **NOT** reach an agreement at Mediation, the **Mediator** will suggest a **Temporary (Interim) Order** for the Judge to sign. A temporary order is entered so that both parents can have contact with the child while the parties are waiting for their hearing to be scheduled.
- The Judge will review the suggested Order and will either sign it as an Interim Order or will change some of the terms before signing it as an Order. The case will then be scheduled for a Court Hearing after the Petitioner completes the parent education class. The Interim Order will remain in effect until another Court Order is issued. You and the Petitioner **MUST** follow the terms of the Interim Order until that time.
- As an alternative, **you and the other parent** may reach a temporary agreement at Mediation. This agreement would be made with the intent that it should only last until the Judge makes a

decision after your Court Hearing. If you do this, the Mediator will type your temporary agreement into a document and you and the other parent will sign the temporary agreement. The Mediator also will sign the temporary agreement. Thereafter, you will be allowed to leave and the Mediator will give your signed temporary agreement to a Commissioner. The Commissioner will decide whether your temporary agreement should become a court order, which is called an **Interim Consent Order**.



Because some kind of Order **will be issued** after Mediation, whether it is a Consent Order or a Temporary (Interim) Order, come to mediation prepared to discuss how the following matters should be addressed in a Custody Order.

□ **PARENTAL DUTY AND RESPONSIBILITY**

- Because it is usually in the best interest of the child to have both parents active in his/her life, the Court generally orders **Joint Custody**, in which parents share the duties and responsibilities of raising the child. Under this arrangement, each parent must care for, support, discipline and make decisions about the child's medical, educational, religious, health and social needs. Parents are expected to share information, discuss and decide together major issues regarding the child.
- If the Petitioner wants **Sole Custody**, an arrangement where you do not actively share in the duties and responsibilities of raising the child, the Petitioner must demonstrate that such an arrangement is in the child's best interest. (For more information on the best interest of a child see pages 10 & 11)
- Generally, no matter how the parental duties and responsibilities are shared, each parent will have the right to request information concerning the child's progress in school, medical treatment, significant developments in the child's life, school activities and

conferences, special religious events and other activities in which the parent may wish to participate. Also, each parent will have the right to reasonable access to the child by telephone or mail.

#### ❑ **PLACEMENT**

- Another aspect of the Custody Order involves where the child will live most of the time. The Custody Order will state whether the child should live primarily with one parent or spend equal time living with each parent. If the Court determines the child should live mostly with one parent, that parent has **primary placement** of the child. Placement is determined according to what is in the **CHILD'S** best interest, not the parent's best interest.

#### ❑ **VISITATION**

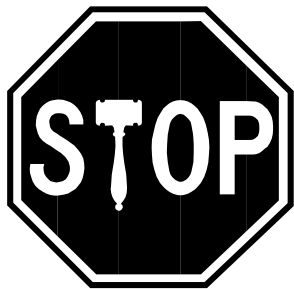
- Generally, when the Court addresses Custody, it will also address Visitation to enable the parent not given primary placement to spend time with the child. Visitation establishes a schedule of contact with the child. For more information on Visitation please read the Visitation Overview and Instruction Packet.
- You should review the Family Court's **Standard Visitation Guidelines** to get a general idea about visitation arrangements. The Standard Visitation Guidelines are on the Family Court website. Consider whether the Standard Visitation Guidelines accommodate you and the Petitioner's schedule as well as the schedule of the child. You are not required to follow the Standard Visitation Guidelines. At Mediation, you and the Petitioner can work together to establish a visitation schedule that works best for you, the Petitioner, and **most importantly**, your child.



**Be realistic when asking for the terms of a custody order.** The law says that it is better for a child to have at least some contact with both parents



unless that contact would endanger the child's physical health or significantly impair his or her emotional development. The focus is on what is in the **CHILD'S best interests**. Just because **YOU** do not want the other parent to be involved in the child's life may not mean that is in your **CHILD'S** best interest. Therefore, at Mediation, be prepared and try to work with the other parent to accommodate the other parent's right to a continuing relationship with the child.



**IF YOU REACHED AN  
AGREEMENT AT  
MEDIATION, THIS IS  
THE END OF THE  
PACKET.  
OTHERWISE, GO TO  
SECTION 4.**

## Section 4

# HEARING WITH A JUDGE

## SCHEDULING THE HEARING



A **Court Hearing** will be scheduled by the Court **ONLY** if:

- The Mediation was unsuccessful (no agreement or a temporary agreement was reached) **OR** Mediation was not required; **AND**
- The original **Certificate(s) of Completion** for the Parent Education Class have been filed. **THE COURT WILL NOT SCHEDULE A HEARING UNTIL THE CERTIFICATE(S) OF COMPLETION HAVE BEEN FILED WITH THE COURT.**

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled, by mailing you a **Notice** to inform you of the time and date of the **Court Hearing**.



Some judges may schedule a **pre-trial hearing**. The purpose of this hearing is to discuss the status of your case prior to scheduling a full evidentiary hearing where you will present evidence and call witnesses.



If you cannot attend the scheduled hearing (pre-trial or evidentiary), you must file the following form:



**Motion for Continuance** (*file one original and mail one to the Petitioner*)

- If, once you receive your Notice, you cannot attend the scheduled pre-trial or evidentiary hearing, you must contact the Court **IMMEDIATELY** by filing a **Motion for Continuance**. **DO NOT** call the Court. On this Motion, you must state **very specific reasons**

why you cannot attend the hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for a Continuance, you must contact the Petitioner regarding the continuance and then **tell the Court in the Motion how the Petitioner feels about the continuance.** Because the law is very strict when it comes to rescheduling hearings, these Motions are not always granted. Read the Motions Instruction Packet for more information about Motions.

- You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS YOU A CONTINUANCE, YOU MUST APPEAR AT COURT THE DAY OF YOUR SCHEDULED HEARING.** If you fail to appear at your hearing, the Court can enter an order granting the Petitioner everything that he/she wants. You would not be given any say in how the custody arrangement would work.

## THE DAY OF THE HEARING



The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Petitioner will each be given an opportunity to tell your side of the case and ask witnesses questions. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story.



Family Court has developed a **Court Hearing Procedure Overview** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. Family Court also has developed a series of **Answers to Frequently Asked Questions on Your Court Hearing** to help you prepare and organize for your Court Hearing. It is helpful to read this information before your scheduled hearing. All Overviews and Frequently Asked Questions are available in the Resource Centers located in each courthouse.



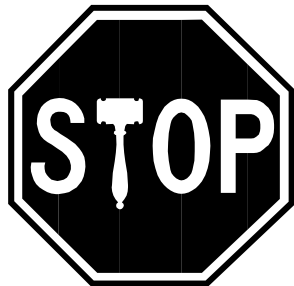
At the hearing, it is up to **YOU** to prove to the Judge **WHY** it is **NOT** in the child's best interest for the Court to grant the Petitioner what he/she is requesting in his/her Petition for Custody. You must also prove why it is in the child's best interest for the Court to grant you what you are requesting. The best interest standard is explained on pages 10 & 11 of this Instruction Packet. Review that information before the hearing, so you are prepared to present your case to the Court. You should come to Court prepared to offer evidence regarding **Parental Duty and Responsibility, Placement, and Visitation**. For more information on these topics see pages 27-28.



After both sides have presented all of their evidence, one of two things can happen. The Judge can **announce his/her decision** at the end of the

hearing, in which case you will leave the Courthouse knowing what the custody arrangement is. **OR**, the Judge can **reserve decision**. When the Judge reserves decision, he/she considers all of the information presented during the hearing and issues a written order explaining the custody arrangement sometime after the hearing. Regardless of how the Judge issues the order, you should receive a copy of the Judge's decision, or the Court Order, in the mail.

Once the Court has entered a Custody Order, you and the Petitioner should follow the terms of the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order. If circumstances change, you and the Petitioner can change the Order by filing the proper petition. For information on how to change a custody order, please see the Modification of Custody Instruction Packet.



**THIS IS THE END  
OF THE CUSTODY  
INSTRUCTION  
PACKET.**

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

## MOTION FOR Continuance

Fill in the title of the motion that you are filing.

### Petitioner

### Respondent

Name <b>Anne C. Smith</b>		
Street Address <b>101 Oak Street</b>		
Apt. or P.O. Box Number <b>Apt. # 123</b>		
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>
Social Security Number <b>111-22-333</b>	Date of Birth <b>2/3/64</b>	
Attorney Name and Phone Number <b>n/a</b>		

Name <b>John D. Smith</b>		
Street Address <b>490 Pine Street</b>		
Apt. or P.O. Box Number		
City <b>Wilmington</b>	State <b>DE</b>	Zip Code <b>19899</b>
Social Security Number <b>787-98</b>		
Attorney Name <b>n/a</b>		

File Number <b>CK04-12111</b>
Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving **Custody** having been filed in this Court, Movant hereby moves the Court for **a continuance** and, in support thereof, alleges the following facts:

Explain what you would like the court to order.

The parties' daughter, Mary Smith has suffered from severe tonsillitis. She is scheduled for surgery on November 30<sup>th</sup>, 2004, the date of the parties' custody hearing. I request that the Court grant a continuance so that I can be with my daughter while she is in surgery. I have contacted the Respondent and he agrees that a continuance should be granted.

Describe in detail for the Court why it should grant your motion. Tell the Court how the other party feels about your request.

SWORN TO AND SUBSCRIBED  
before me this date,

Sign in the presence of a notary.

*November 10, 2004*

*Anne C. Smith*  
Movant/Attorney

*Donna King*  
Notary Public/Clerk of Court

Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date **11/10/2004** by **John D. Smith** at the address listed on the petition, being **John D. Smith**, first class postage pre-paid.

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

SWORN TO AND SUBSCRIBED  
before me this date,

Sign in the presence of a notary.

*November 28, 2004*

*Anne C. Smith*  
Movant/Attorney

*Donna King*  
Notary Public/Clerk of Court

Signed by notary or court staff.